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REPORT TO THE LEGISLATURE

Sunset Review

BOARD OF HEARING AID DISPENSERS

The 1977 Sunset Law terminates the Board on July 1, 1981. This review provides information to assist the Legislature in making the decision to terminate, modify or continue the Board.

This report presents twelve areas for Legislative consideration (page 19) including:

- Lack of board inspection of facilities and audiometers.
- A section of the law which prohibits audiologists from selling hearing aids.
- Two separate boards regulating individuals engaged in testing, measurement and modification of hearing.
- Board use of notarized complaint forms and establishment of a complaint register.
- Changes in laws relative to board membership and compensation.

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May 1980

The Legislative Audit Committee
of the Montana State Legislature:

Herein transmitted is our sunset performance review of the Montana Board of Hearing Aid Dispensers. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1981.

The review focused upon an examination of board operations. It does not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Professional and Occupational Licensing, the members of the Board of Hearing Aid Dispensers, the Governor's Office of Budget and Program Planning, the National Hearing Aid Society and a representative of the Hearing Conservation Program of the Department of Health and Environmental Sciences.

We wish to express our appreciation to the members of the board and to the director of the department and his staff for the assistance they provided during the review. We also wish to thank the members of the hearing aid industry for assistance they gave us.

Respectfully submitted,

Morris L. Brusett

Morris L. Brusett, C.P.A.
Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF HEARING AID DISPENSERS

		Term Expires
Cecilia Sweeney Chairman	Butte	1980
Dudley Anderson Secretary-Treasurer	Missoula	1981
Robert B. Chaney, Ph.D. Audiologist	Missoula	1980
Ervin E. King	Billings	1982
Charles H. Steele, M.D. Otolaryngologist	Great Falls	1982

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Ed Carney	Director
Kathryn Tucker	Administrative Assistant

Chapter I

BACKGROUND

This sunset review addresses state regulation of hearing aid dispensers by the Board of Hearing Aid Dispensers--a state board within the Department of Professional and Occupational Licensing.

REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Hearing Aid Dispensers. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must objectively examine the need for each regulatory board/agency and the Audit Committee must offer recommendations for reestablishment, modification, or termination.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

(a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the occupation, and interested members of the public.

In defining the intent of the sunset law the legislature provided for periodic examination of each board every six years. In this way, the legislature will be in a better position to ensure that agencies and their programs exist only to be responsive to state residents' needs. The sunset law terminates the Board of Hearing Aid Dispensers on July 1, 1981.

HEARING AID DISPENSING OCCUPATION

The occupation of hearing aid dispensing involves the fitting and selling of hearing aids. A hearing aid is an instrument or device designed for or represented as aiding or improving defective human hearing. Hearing aid dispensers evaluate or measure the power or range of human hearing by means of an audiometer and by

visual examination of the ear and ear canal. Dispensers ultimately select, adapt, fit, and sell a hearing aid intended to compensate for hearing loss.

In addition to the occupation of hearing aid dispensing, two professions are also involved in hearing health care. Physicians specializing in diseases of the ear are known as "otologists" or "otolaryngologists" and are often consulted prior to the seeking of amplification through a hearing aid. The other professional is an audiologist who is university-educated and works in nonprofit community or university speech and hearing centers, public health departments, hospitals, special clinics or other rehabilitative settings, and private practice.

In 1978 the retail hearing aid industry in the United States was comprised of approximately 10,000 to 17,000 people, of whom 8,000 were either licensed dispensers or had similar qualifications in those states which had no licensing law. The balance was office and clerical personnel.

A 1978 Federal Trade Commission report noted that the hearing aid manufacturing industry consists of over 40 manufacturers. Hearing aids are sold by manufacturers directly to retail sellers, who in turn resell the hearing aids to consumers. Most manufacturers consider the retail sellers to be independent agents

and deny any control over or involvement with retail purchase transactions, prices, or policies.[1]

The FTC report also stated:

> "There were approximately 650,000 hearing aids sold in the United States in 1975 at an estimated wholesale cost of $60 million. Since the average hearing aid costs between $300 and $400, total annual retail sales should be between $195 and $260 million. About one-half of the roughly 650,000 hearing aids sold annually are sold to existing users. According to dealer and industry figures, home sales account for between 70 and 90 percent of all sales, depending on the rural or urban nature of the marketplace. In addition, between 50 and 70 percent of hearing aids sales are to persons over 65 years of age."

During fiscal year 1978-79, there were 37 individuals licensed to fit and sell hearing aids in Montana.

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[1] Hearing Aid Industry Staff Report, Bureau of Consumer Protection, Federal Trade Commission, September 1978, Appendices A and B, pp. 106-107.

Chapter II

BOARD OF HEARING AID DISPENSERS

INTRODUCTION

The State Board of Hearing Aid Dispensers was created in 1969 to provide for regulation of fitting and selling hearing aids to the public. The law establishes minimum qualifications for hearing aid dispensers and requires that they follow certain guidelines.

The powers and duties of the present Board of Hearing Aid Dispensers are as follows:

1. Determine applicant qualifications and give examinations to those who qualify.

2. Issue licenses to those who pass the examinations.

3. Renew the licenses of hearing aid dispensers annually.

4. Establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activity of persons licensed or unlicensed.

5. Hold hearings when necessary and suspend or revoke licenses when justified.

6. Adopt rules necessary to carry out the statutes.

7. Require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of the facilities of hearing aid dispensers.

8. Initiate legal action against unlicensed individuals or corporations engaged in the sale and fitting of hearing aids.

BOARD OPERATIONS

Structure

The board is composed of five members appointed by the governor. Three members are required to be licensed hearing aid dispensers, the fourth member is required to be a physician whose speciality is otolaryngology and the fifth member must be a certified audiologist.

The board is required by law to hold at least one meeting each year. However, the board generally meets two to three times a year in Helena. Board members receive $20 per day compensation plus the travel expenses ordinarily provided by the state.

Staffing and Funding

The board is attached to the Department of Professional and Occupational Licensing for administrative purposes. The department provides administrative support to the board in the form of secretarial, legal, budgeting, and accounting services. The board is autonomous in decision-making functions with respect to the licensing process. The department provides a part-time position (.06 FTE) to administer the board's activities. This amounts to approximately 125 hours of administrative duties per year.

The activities of the board are supported through the collection of application and license renewal fees. These fees are deposited to the board's account in the Earmarked Revenue Fund and made available to the board

by legislative appropriation. The board's appropriation for fiscal 1978-79 was $2,846. The license renewal fee is established by law and shall not exceed $80. The current fees charged by the board are shown in Illustration 1.

FEE SCHEDULE

Application and examination	$50
Temporary license	25
Temporary license renewal	30
License renewal	80

Source: Compiled by the Office of the Legislative Auditor.

Illustration 1

The following illustration depicts the financial history of the board from fiscal year 1972-73 through fiscal year 1978-79. Fund balances are as of June 30 of each year.

BOARD OF HEARING AID DISPENSERS
FINANCIAL HISTORY

Fiscal Year	Revenue	Expenditures*	Fund Balance
1978-79	$3,315	$1,785	$4,761
1977-78	4,385	2,570	3,231
1976-77	2,541	3,732	1,416
1975-76	5,130	4,129	2,607
1974-75	3,070	3,589	1,606
1973-74	3,330	3,483	2,125
1972-73	4,035	1,784	2,278

*Includes prior year expenditures, adjustments, and accruals.

Source: Compiled by the Office of the Legislative Auditor from the financial reports for the state of Montana.

Illustration 2

BOARD GOALS AND OBJECTIVES

Sunset legislation requires that the board delineate the goals and objectives of programs for which it is responsible. The stated goal of the board is:

--To continue to improve the system of quality hearing aid delivery to the hearing impaired public. This can be best accomplished by continuing board supervision on competency, service and avoidance of too strict regulation. To encourage moral and ethical conduct by more aggressive management of consumer complaints.

The objectives of the board are:

--To maintain competition in the free enterprise system.

--To maintain the present accomplishments in good hearing aid delivery to the public

--To encourage hearing aid dispensers to upgrade and improve their relations with the public and the medical profession, especially pertaining to the Food and Drug Administration rules.

--To have more self-education through encouraging attendance at seminars and other educational opportunities that are presented from time to time.

BOARD FUNCTIONS

Licensing

At the beginning of this chapter we listed eight powers or duties of the board. The first three are concerned with the licensing of hearing aid dispensers. All applicants must meet specific qualifications as outlined in the statutes. The following requirements are necessary for an individual to become licensed as a hearing aid dispenser:

--be of good moral character;

--have an education equivalent to a 4-year course in an accredited high school or continuously engaged in the practice of fitting and dispensing hearing aids during the 3 years preceding the date of application;

--be free of contagious or infectious disease; and

--pass a written and practical examination.

The board examination consists of three parts and is administered at board meetings. The first part is a written examination covering the subject areas outlined in 37-16-404, MCA, for the fitting of hearing aids. The second part is a written examination covering laws and rules, both state and federal, of hearing aid dispensing. The third part is an oral practical examination. Passing score on the written parts is 80 percent, and passing on the practical part is by majority vote of the board.

The following illustrations show the number of applicants taking and passing the board's examination and the number of license renewals over the past seven fiscal years.

NUMBER OF APPLICANTS TAKING AND PASSING THE WRITTEN AND PRACTICAL EXAMINATIONS

Fiscal Year	Taken	Passed	Percent
1978-79	4	2	50%
1977-78	11	5	45%
1976-77	5	4	80%
1975-76	4	3	75%
1974-75	16	11	69%
1973-74	9	7	78%
1972-73	2	2	100%

Source: Compiled by the Legislative Auditor from board records.

Illustration 3

NEW AND RENEWED LICENSES

Fiscal Year	Dispenser			Temporary	
	New	Renewed	Total	New	Renewed
1978-79	5	32	37	9	1
1977-78	5	36	41	7	0
1976-77	4	36	40	14	0
1975-76	3	45	48	6	0
1974-75	12	48	60	8	0
1973-74	8	43	51	15	0
1972-73	1	NA*	NA*	8	0

*Not Available

Source: Compiled by the Legislative Auditor from board records.

Illustration 4

Of the 37 licensed dispensers practicing during fiscal year 1978-79, 17 received their licenses under the "grandfather clause" on the effective date of the law (did not take an examination). An additional 3 dispensers received their licenses through reciprocity with other states. Of the remaining dispensers, 17 took and passed the Montana Board of Hearing Aid Dispensers' examinations.

The board issues a temporary license which allows individuals to fit and dispense hearing aids until the individuals can be examined by the board. All temporary licensees must be supervised and trained by persons holding a valid dispenser's license. When a temporary licensee fails the first examination, the temporary license may be renewed once until 30 days after the second examination at the discretion of the board.

Complaints

For fiscal years 1972-73 to 1978-79, the board received 73 complaints. Illustration 5 shows that the number of complaints against dispensers steadily decreased from fiscal year 1974-75 to 1977-78, and then increased in 1978-79.

BOARD COMPLAINT REGISTER

Fiscal Year	Number of Complaints
1978-79	12*
1977-78	8
1976-77	9
1975-76	13
1974-75	17
1973-74	7
1972-73	7
Total	73

*Eight complaints were filed by dispensers against dispensers.

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 5

Complaints are received at the department by the board's administrative secretary. When a complaint is mailed or telephoned to the board, the administrative secretary mails out the board's complaint form which must be completed and signed by the complainant. The complaint form must then be notarized and returned. Once received by the department, a copy of the complaint is sent to the dispenser named in the complaint. The dispenser then has 30 days to resolve the complaint and explain in writing how the complaint was resolved or explain why the complaint cannot be resolved. After

30 days, unresolved complaints are turned over to the board for further review and appropriate action. No license issued by the board may be suspended, revoked, denied, or denied renewal without notice and opportunity for a hearing. The board has final responsibility for taking any administrative action based on a complaint and for closing complaint files.

For fiscal years 1972-73 through 1978-79, the board revoked three licenses and had initiated revocation proceedings against two other licensees, but stopped when the dispensers failed to renew their licenses. One revocation involved a violation of state law which requires a dispenser to maintain a permanent place of business. Another license was revoked because the dispenser failed to respond to the board within 30 days of filed complaints. The third license was revoked for the failure of the dispenser to honor contracts and refund money to dissatisfied clients.

Complaints are received by the board from several sources. Fifty-six of the seventy-three complaints were received by the board from dissatisfied hearing aid consumers. Some of these consumer complaints are forwarded to the board by the Consumer Affairs Division of the Department of Business Regulation and from other health related state agencies. Other complaints have come from the board, the licensees of the board, and

one complaint was filed by an audiologist. The greatest majority of complaints are directed at hearing aid dispensers, although two complaints were registered against hearing aid manufacturers.

A review of board complaint records indicates that complaints cover a wide range of problems. The most common complaints concern customer dissatisfaction with the product and poor customer service after the sale. The following illustration lists the complaints registered by category for fiscal years 1972-73 to 1978-79.

COMPLAINTS BY CATEGORY AND BOARD ACTION
FISCAL YEARS 1972-73 TO 1978-79

Complaint Category	Number	Board Action: Consumer Received Satisfaction or Refund	Board Advised Complainant to Seek Other Legal Remedy	No Legal Violation/ Complaint Withdrawn	Cease and Desist	Licenses Revoked	Dispenser Failed to Renew License Disposition Unknown	Unknown Disposition
Consumer dissatisfied with product/wants refund	24	9	2	2	-	-	4	7
Inadequate service after the sale	14	3	1	-	-	-	7	3
Method of selling-misrepresentation	3	-	-	1	1	-	-	1
Selling rebuilt as new	2	-	-	-	-	-	1	1
Nondelivery of product	8	3	1	-	-	2	2	-
Unlicensed sales	3	-	-	-	2*	-	-	1*
No office maintained	2	-	-	-	1*	1*	-	-
Misleading/false advertising	3	-	-	-	2*	-	-	1**
Felony conviction	1	-	-	-	-	-	1*	-
Miscellaneous	13	-	8***	2	-	-	1	2
Total	73	15	12	5	6	3	16	16

* Complaints initiated by the board.
** Complaint initiated by audiologist.
***Complaints initiated by dispensers against dispensers.

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 6

EXEMPTIONS TO REGULATION

Individuals may not engage in the sale or practice of dispensing and fitting hearing aids or hold themselves out as persons who practice the dispensing and fitting of hearing aids unless they hold a current license. Exemptions to this law are: 1) physicians who are licensed to practice by the state Board of Medical Examiners, 2) individuals engaged in fitting hearing aids as part of an academic curriculum, and 3) persons fitting hearing aids as part of a program by a public agency or by a charitable or nonprofit organization, unless they sell hearing aids.

Chapter III

OTHER REGULATION

State regulation of the hearing aid delivery system began in Oregon in 1960, and now includes 42 states that either license or register hearing aid dispensers. The following illustration compares Montana's regulation of hearing aid dispensers with some regulatory aspects of other states.

REGULATION OF HEARING AID DISPENSERS

Facet	U.S.	Montana
Board size	1 board - 3 members 16 boards - 5 members 3 boards - 6 members 14 boards - 7 members 4 boards - 8 members 3 boards - 9 members 1 state agency - no members	5 members
Board Makeup	35 boards - Dispensers plus 1 audiologist and 1 M.D. usually otolaryngologist) 25 boards - majority dispensers 20 boards - at least one public member	3 - dispensers 1 - otolaryngologist 1 - audiologist
Continuing Education	12 boards - required or program being developed	None

Source: Compiled by the Office of the Legislative Auditor using data furnished by the National Hearing Aid Society.

Illustration 7

In addition to states' regulation, the federal government is also actively involved in regulation of the hearing aid dispensing industry. The Food and Drug Administration (FDA), acting under congressional authority contained in the Medical Device Amendments of 1976 (PL 94-295), has declared the hearing aid a restricted

medical device. A comprehensive FDA regulation covering professional and patient labeling and conditions for sale of hearing aids became effective on August 25, 1977.

In the preamble to the FDA regulation the Commissioner states:

> "The Commissioner notes that . . . the competency and training of hearing health professionals, whether physicians, audiologists, or hearing aid dispensers, was of utmost importance to the delivery of quality hearing aid health care services. . . . State and local licensing laws, as administered by State and local agencies, are the appropriate legal mechanisms for establishing minimum competency standards for the practice of a health profession or related activity." (Federal Register, Vol. 42, No. 31 -- Tuesday, February 15, 1977, p. 9287.)

The Federal Trade Commission (FTC) also regulates the commercial practices of hearing aid dispensers. The FTC regulations, effective since 1965, particularly focus on misrepresentation and deception in the fitting and sale of hearing aids. The Montana board specifically noted the FTC regulations in its administrative rules by stating the following in subsection (2) of its Code of Ethics:

> "It shall be unethical conduct to engage in any of those methods of advertising that are prohibited by rules 1 through 17 of the Trade Practice Rules of the Federal Trade Commission as adopted and promulgated on July 20, 1965 and as amended to date."

The FTC regulates general trade practices. It does not handle individual consumer complaints. However, the commission depends on communications from the

public to help it determine which products and practices require investigation.

As with most licensed occupations, the regulation of hearing aid dispensers is also influenced through professional societies and organizations. Presently 5 Montana hearing aid dispensers are members of the National Hearing Aid Society and 14 dispensers are members of the Montana Hearing Aid Society. The societies have a certain degree of self-regulatory power over their memberships. The societies set standards of conduct, establish continuing education, and provide input into state licensing boards and federal regulations.

Chapter IV

AREAS FOR LEGISLATIVE CONSIDERATION

The design and effectiveness of certain aspects of the regulatory process may warrant legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Hearing Aid Dispensers.

The areas of consideration include:

1. Board Inspections
2. Administrative Rules
3. Hearing Aid Dispensers and Audiologists
4. Use of the Word "Audiologist"
5. Regulatory Duplication
6. Continued Competency
7. Board Complaint Register
8. Notarized Complaint Forms
9. Board Member Compensation
10. Board Membership
11. Administrative Functions
12. Other Areas of Consideration

BOARD INSPECTIONS

One of the powers and duties of the board is stated in 37-16-202(6), MCA, as follows:

> "require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids."

To date, the board has not been requiring periodic inspection and calibration of audiometric testing equipment and has no record of any inspections of the facilities of its licensees. In years past, the board sporadically sent out a questionnaire form which requested information on equipment and facilities of dispensers. However, no procedures were established to determine if the forms were returned or were accurate.

The audiometer is the primary piece of equipment used by hearing aid dispensers to determine and measure the extent of hearing loss. Audiometers must be periodically calibrated to insure they are capable of performing accurate and adequate tests. The board does not require audiometer calibration reports prior to issuance of a dispenser's license or thereafter. Therefore, all dealers are licensed without initial proof or continued proof of calibrated equipment. The possibility exists that an inaccurate, noncalibrated audiometer could be used indefinitely by a dispenser for the determination of hearing losses and the sale of hearing aids. Without periodic inspection and calibration of audiometric testing equipment, the effectiveness of the board in protecting the public's interests is limited. In the state of Georgia, the Board of Hearing Aid Dealers and Dispensers requires annual audiometer calibration reports. Montana could require audiometer calibration certification or accuracy verification as a part of its annual license renewal.

We discussed the lack of facility inspections with the board and the department and were told that "lack of funds" was the primary reason for the board's noncompliance with the law. For fiscal year 1978-79, the board had a fund balance of $4,761 and unexpended appropriations of approximately $1,000 from its total appropriation of $2,846.

ADMINISTRATIVE RULES

Section 37-16-202(5), MCA, is the authority which allows the board to adopt rules necessary to carry out the provisions of the hearing aid dispensing law. There are two specific rules which may not be necessary to carry out the present law. The first administrative rule (ARM 40-3.42(6)-S4230) relates to a six-month traineeship requirement and a specified course as prerequisite to taking the examination. The board presently has no statutory authority to impose additional qualifications as prerequisites to attempting to pass the examination. In April 1978, the Administrative Code Committee notified the board that the rule lacked statutory authority, but no action has been taken to remove the rule. Although the board no longer enforces the rule, the board members think its a good rule and still inform prospective licensees that the traineeship outlined in the rule will enable them to more easily pass the examination.

The second administrative rule (ARM 40-3.42(6)-S42020), which may be unnecessary, is the requirement that all hearing aid dispensers maintain all hearing tests and records "indefinitely" on all persons to whom they sell hearing aids. Medical health care facilities have established record retention schedules for patient records, i.e., 7 years for out-patient, 25 years for most other medical records. For those records which must be kept indefinitely, microfilm is used. The indefinite records retention requirement for dispensers is unusual and costly and a determination should be made as to its necessity.

HEARING AID DISPENSERS AND AUDIOLOGISTS

Since the 1975 creation of the Board of Speech Pathologists and Audiologists, hearing aid dispensers and audiologists have questioned each others' role in the hearing health care field. Audiologists are university educated professionals with all but a few having at least a Masters Degree in Audiology. The practice of audiology is defined in Montana law as follows:

> "The application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory behavior related to hearing impairment."

The use and fitting of hearing aids by audiologists has increasingly become a part of the practice of

audiology. However, it is this area of practice which causes problems between dispensers and audiologists. To sell a hearing aid, an audiologist must be licensed by the Board of Hearing Aid Dispensers. Audiologists have reasoned that they should not have to be licensed by a second board to engage in what they were trained to do. Hearing aid dispensers maintain that all who sell hearing aids should be required to demonstrate their proficiency in actual practice, not merely through academic training.

A recent Montana Attorney General's opinion has clarified the practice areas of audiologists through the following discussion:

1. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser, based upon the exemption of section 37-16-103, MCA. As explained in 37 OP. ATT'Y GEN. NO. 60, this exemption may be enjoyed only if the hearing aids are not sold, a sale including sales at a profit, at cost, or even at a loss.

2. There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser, if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery.

3. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may

> fit an aid, whether permanently or for a trial period, without a dispenser's license. No other person not otherwise licensed or within the exemption of 37-16-103, MCA, may do so.

From the foregoing opinion, an audiologist may legally perform every function except the actual selling of a hearing aid.

The sunset law, 2-8-101(2)(c), MCA, states the following:

> No profession, occupation, business, industry, or other endeavor are subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

The law which prohibits audiologists from selling hearing aids does not appear to be designed solely for public protection. The law also protects hearing aid dispensers from the commercial competition of audiologists. We discussed this with dispensers and they noted that, in some instances, audiologists may have a competitive advantage if they were allowed to sell hearing aids as part of their employment with nonprofit institutions or public-supported hearing clinics.

USE OF THE WORD AUDIOLOGIST

Section 37-15-102(5), MCA, states that the definition "Audiologist means a person who practices audiology and who presents himself to the public by any title

or description of services incorporating the words 'audiologist' . . . or any similar title or description of service." Under licensing section 37-15-301(2), MCA, the law states that "No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed . . ." with the Board of Speech Pathologists and Audiologists.

At the present time, five Montana hearing aid dispensers are using the title "Certified Hearing Aid Audiologist." The dispensers use the title because the dispensers have successfully completed a specific course of study as members of the National Hearing Aid Society (NHAS). The rules of the Board of Hearing Aid Dispensers recognize the title and restrict its use to those certified by NHAS. No mention is made of the audiology law.

Use of the word "audiologist," separately or with other words in a title, is prohibited by Montana's speech pathology and audiology law unless the person is licensed as an audiologist. Although hearing aid dispensers in the performance of their duties are exempt to the speech pathology and audiology law, there is no exemption for dispensers from provisions of the law against using the term "audiologist." The board should insure that its licensees comply with the statutes relating to the use of the title "audiologist," and remove any reference to the title from the board rules.

REGULATORY DUPLICATION

Currently, the Board of Hearing Aid Dispensers and the Board of Speech Pathologists and Audiologists are involved with the licensing of individuals engaged in testing, measurement, evaluation and modification of human hearing. To modify human hearing, licensees of both boards are legally qualified to fit hearing aids on individuals who require them. Only those licensed by the Board of Hearing Aid Dispensers may sell hearing aids. Licensed audiologists desiring to sell hearing aids must therefore be licensed by two boards. To eliminate duplication and to consolidate regulation in the hearing health care field, consideration might be given to combining the Board of Hearing Aid Dispensers and the Board of Speech Pathologists and Audiologists into one regulatory entity, yet maintaining the identity of each occupation.

CONTINUED COMPETENCY

Annual renewal of a dispenser's license involves payment of a renewal fee. The licensee must meet no continuing qualification standards. Beyond the requirements for initial licensure, no further educational training must be pursued by a dispenser. If "on-the-job" experience and professional motivation are adequate for maintaining competency and pace with changes in the industry, then additional renewal requirements

are not necessary. But, if it becomes necessary to insure the public health and safety through mandatory maintenance of proficiency, then continuing education, peer review, or passage of a periodic examination are options to be considered for renewal.

Mandatory continuing education would require that a licensee attend a specific number of courses, seminars, etc., prior to license renewal. The actual course of study is usually subject to approval by the regulatory body. However, continued competence within a profession is the responsibility of the professional's own motivation. There is no guarantee of a correlation between continuing education and competency of the hearing aid dispenser. The dispenser who acquires the most education is not necessarily the most competent. We noted in Chapter III that 12 of the 42 states which regulate dispensers have continuing education requirements in effect or pending.

Another option is reexamination. Since an examination is used to assure a level of competency prior to initial licensure, then a periodic examination could be used to reevaluate a licensee's knowledge. Again, there is no guarantee of a positive correlation between a test score and a licensee's overall competency. For example, when a licensee has established a practice, the individual may specialize in a particular area. An

examination over all areas would give a false impression of the individual's competency if poor scores were obtained in areas other than the specialty.

Peer review is another option to assure maintenance of competency. Peer review entails members of the industry evaluating the work, methods, and procedures used by other members. The regulatory body or a designated committee made up of members of the industry usually perform the reviews.

BOARD COMPLAINT REGISTER

In Chapter II we noted that part of the board's goal is more aggressive management of consumer complaints. The complaints tabulated in Illustration 6 show that nearly half the complaints registered by the board have an unknown disposition. For the complaints of unknown disposition, it is impossible to determine the ultimate outcome, i.e., board action, consumer satisfaction, or legal remedy. In addition, seven entries on the complaint register were administrative notations, not complaints.

The complaint register is a valuable management tool when thoroughly filled out and kept up to date. It enables anyone to know the status of a complaint or its disposition. The complaint register allows the board to judge the effectiveness of its regulation for the protection of the public.

NOTARIZED COMPLAINT FORMS

The board presently requires that all complaints be submitted on a board complaint form and be notarized. Although 25 percent of the boards within the department have laws or rules requiring formal complaint forms, none exist for the Board of Hearing Aid Dispensers.

As previously noted, over one-half of hearing aid consumers are over 65 years of age and for many, notary services are not readily available, and occasionally include a fee. The present notary requirement of the board may be unnecessarily restrictive and have the effect of discouraging valid consumer complaints. The board should review its requirement for notarization of complaints.

BOARD MEMBER COMPENSATION

As previously noted, board members receive $20 per day compensation plus travel expenses provided by the state. The majority of regulatory boards within the department compensate board members $25 per day.

Time and expenses incurred by members of the Board of Hearing Aid Dispensers are equal to those of other boards and should be compensated equally.

BOARD MEMBERSHIP

Association Appointments

Section 2-15-1616, MCA, states that:

"The board consists of five members appointed by the governor. The members are:
(a) One member appointed from a list submitted by the Montana academy of oto-ophthamology.
(b) One member appointed from a list submitted by the Montana Speech and Hearing Association.
(c) Three members appointed from a list submitted by the Montana Hearing Aid Dealers' Society.

Two recent state supreme court decisions have nullified such statutory processes of appointing board members in South Carolina and Washington. The courts ruled that the statutes requiring board members to be appointed from lists submitted by the states' chiropractic associations were unconstitutional because they delegated governmental authority to a private organization. The delegation of such authority under Montana's hearing aid dispensers law should therefore be reviewed.

Public Membership

As noted in Chapter III, 20 states now require at least one public or laymember to be on the state licensing board. The purpose for public membership on professional boards is to facilitate public input into board operations. Presently, 13 occupational licensing boards in Montana have public members. Although the Montana Board of Hearing Aid Dispensers does not have a public member, the physician and audiologist on the board provide nonindustry input into board decisions.

Any appointment of public members could be balanced against factors such as the size of the board and the number of other professions represented.

Senate Confirmation

At the present time, gubernatorial appointments to the board are not subject to Senate confirmation, although the Senate has confirmed the appointments to some of the state's boards and commissions. During the 1977-79 biennium of sunset, the Legislative Audit Committee recommended that appointments to regulatory boards be subject to Senate confirmation.

ADMINISTRATIVE FUNCTIONS

As a result of various sunset reviews of boards within the Department of Professional and Occupational Licensing, three separate administrative areas have consistently been identified. These areas are:

--Reporting requirements of boards.

--Automated license records.

--Multi-year renewal.

Since individual documents will be formulated concerning these administrative areas, a detailed discussion of each is not presented in our review of the board.

Reporting Requirements of Boards

Montana currently has a reporting requirement, section 2-7-102, MCA, which requires all state governmental agencies to submit biennial reports to the

Governor. However, these reports when published, contain very limited information. A report containing more specific information (i.e., number of applicants and examinations, pass-fail rate, receipts and expenditures, goals and objectives, complaints, dispositions of complaints) would increase the usefulness of the report and allow the legislature to more easily monitor a board's activity.

Automated License Records

At the present time, most licensee records are kept manually by the boards within the department. In addition, new and renewed licenses are manually typed by administrative secretaries. An alternative is to automate license records through a department-wide system. The automated system could print renewal notices and also licenses. In addition, such automated records could be used to generate statistical reports on the licensee populations. Additions, deletions, and corrections to the licensee files could also be made easily.

Multi-year Renewal

Most boards within the department are statutorily required to renew licenses on an annual basis. Annual renewal may not be necessary and may result in administrative costs in excess of those necessary for effective regulation. An alternative to annual renewal is to spread renewals over two or more years. If renewals

were extended for more than one year, the department workload and administrative expenses would be reduced.

OTHER AREAS OF CONSIDERATION

In previous reviews of regulatory boards in Montana, the aspect of setting licensing fees commensurate with the cost of regulation was often discussed. Presently, the board has statutory authority to set fees necessary to cover costs. At this time the account fund balance does not appear excessive.